

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

BECHTEL BETTIS, INC.,

Employer

and

Case 27-UC-215

EASTERN IDAHO METAL TRADES COUNCIL,

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

On January 8, 2004, the Eastern Idaho Metal Trades Council (Union or Petitioner) filed the above-referenced Unit Clarification petition seeking to accrete the position of Nuclear Worker Technician (NWT) into the maintenance/craft unit it has represented since 1952. The NWT position was created in October 2003 by changing the job classification title of 99 non-unit employees formerly called "Irradiated Components Examination Technicians" (ICET) and posting a job-opening announcement which resulted in seven unit employees being promoted into available NWT positions.

The Petitioner contends that it is appropriate for the Board to direct the inclusion of the NWTs into the existing unit because, when the Employer created the NWT position, it also assigned some work duties previously preformed by about seven unit laborers and mechanics to the NWT classification. The Employer argues, in part, that it is inappropriate to accrete the NWTs into the existing unit because there are currently 106 NWTs and only 103 unit employees. The Employer further contends that since 99 of the current NWTs

were formerly classified as “Irradiated Components Examination Technicians” and included in a facility-wide technical unit with the Employer’s other technical employees by the Board in various previous representation proceedings, it would be inappropriate to include the NWTs in the maintenance/craft unit based on the Petitioner’s proposed community of interest analysis.

I have considered the evidence and the arguments presented by the parties on this issue, and, as discussed below, I have concluded that it is inappropriate to accrete the NWTs into the existing unit on the basis that the NWTs constitute a larger group of employees than the existing bargaining unit. I also find that it would be inappropriate to accrete the NWTs into the maintenance/craft unit because to do so would upset the established practice of the parties of excluding technicians from the existing unit and holdings of the Board finding wall-to-wall technician units to be appropriate at the Employer’s facility. See, **Union Electric Company**, 217 NLRB 666 (1975) and its progeny. Accordingly, I shall order that this unit clarification petition be dismissed.

To provide a context for my discussion of this issue, I will provide a procedural statement of the case before me; an historical overview of the Employer’s operations; the bargaining history involving technician classifications at the Naval Reactors Facility; and the evolution and implementation of the NWT classification. Then, I will analyze the facts and relevant case authority that support my conclusion.

STATEMENT OF THE CASE

As a result of the issue raised by the Union’s unit clarification petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on January 22, 2004, in Idaho Falls, Idaho, before Michael W. Weidmann, a hearing officer for

the National Labor Relations Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me.

Upon the entire record in this proceeding, I make the following findings:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer, Bechtel Bettis, Inc., is a Delaware corporation engaged in contract work for the United States Navy and the United States Department of Energy at the Naval Reactors Facility located 60 miles west of Idaho Falls, Idaho at the Idaho National Engineering and Environmental Laboratories site. During the past 12 months, the Employer received in excess of \$500,000 for its services which have a substantial impact on the national defense of the United States of America, and during the same time period, purchased and received at its Idaho site materials valued in excess of \$50,000 directly from suppliers located outside the State of Idaho. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved, Eastern Idaho Metal Trades Council, is a labor organization within the meaning of the Act, and claims to represent the Nuclear Worker Technicians employed by the Employer.

4. Based upon the record herein, and for the reasons set forth below, the Petitioner is not the exclusive collective-bargaining representative of the Nuclear Worker Technicians within the meaning of Section 9 of the Act.

HISTORICAL OVERVIEW OF THE EMPLOYER'S OPERATIONS

1. Naval Reactors Facility

The Naval Reactors Facility (NRF) is a 75-acre site located at the Idaho National Engineering and Environmental Laboratories. The NRF has been in existence since about 1949. It was established to test and operate various types of nuclear reactors as part of a reactor development program of the Atomic Energy Commission. At its inception, Westinghouse Electric Corporation was the contractor performing operations at the NRF. Bechtel Bettis became the operations contractor in 1999. Almost all of the witnesses at the hearing have worked at the NRF for both the Employer and its predecessor and

testified to the continuity of operations under both contractors.

There are currently about 720 employees working at the NRF including the 106 NWTs and 103 unit employees.¹ Also included are managers, engineering professionals, office clerical employees and about 70 other technical employees as described more fully below. All employees are salaried, enjoy the same benefit package, including medical, dental, and disability insurance and 401(k) plan, share the same cafeteria and lunchrooms, record their work hours on the computerized Chronos system, utilize the Employer-provided bus transportation from Idaho Falls, and upon issuance of a password, can access the Employer's general website. The NRF is a secured facility, and employees are restricted in the areas to which they are allowed access based on their classifications and security clearances. All employees at the NRF must have at least an "L" (confidential level) security clearance. All of the unit employees except for the locksmith have an L-clearance. The locksmith must have a higher "Q" (secret level) security clearance, which is the same security clearance required for the NWTs.

Historically, the NRF was built to operate prototype reactors. The predecessor technicians to the ICETs (now NWTs) were called fuel handlers and hot cell technicians, and they were involved in the actual operation of the reactor plants. Work

¹ These respective numbers of NWTs and unit employees were established by two exhibits entered into evidence without objection by the Petitioner. The first, Employer's Exhibit No. 5, listed the 106 NWTs by name, hire date into the NWT or ICET position, and the date and former position if the employee had transferred into the NWT or ICET position. The second, Employer Exhibit 9, provides a list of the numbers of unit employees in each of the classifications listed in the collective-bargaining agreement.

at the NRF has evolved to the point that the ICETs (now NWTs) are involved primarily in handling, processing, and testing spent fuels and irradiated nuclear components that come from United States Navy warships, including surface ships and submarines. The spent nuclear fuel also comes from public and private naval shipyards, from the Bettis Atomic Power Laboratory in Pittsburgh, Pennsylvania, and also from the Capital Atomic Power Laboratories. The containers of spent fuel from the Navy test programs arrive based upon the schedules of Navy warships. The other types of materials arrive based on the schedules of the advanced test reactors. The NWTs also perform some examination programs associated with new materials fuels from the advanced test reactors. The majority of the work performed by the NWTs and other technicians is done in the Extended Core Facility (ECF).

The ECF is a concrete building, 1000 feet long and 194 feet wide. It has been characterized as the largest building in Idaho. While the ECF houses some offices and enclosed work areas, its primary function is to house an array of interconnected concrete water pools that permit visual observation of Naval spent nuclear fuel during handling and inspection of fuel and components, while shielding workers from radiation. These pools are 40 feet deep, and hold 3 and ½ million gallons of water. Adjacent to the water pools are shielded hot cells used for operations which must be performed on dry components. Access to ECF for receipt and shipping of materials is provided by large rollup doors which allow railcar and truck entry. Generally, the processing begins at one end of the building and ends at the other. The spent fuel arrives at the facility housed in a variety of different types of shielded casks. These casks enter the facility on the rail cars or truck beds and are then opened for processing following rigidly proscribed procedures

established by the United States Navy and the Department of Energy. This processing can take months to perform, depending on the nature of the components.

2. Unit employee work functions

The Petitioner herein was certified to represent the existing unit employees in 1952, pursuant to representation proceedings in Board Cases 19-RC-1036 and 19-RC-1069.

That existing unit was stipulated by the parties to include:

All employees at the Company's Naval Reactors Facility, Idaho, including plant clerical employees, but excluding office clerical employees, professional employees, draftsmen, technicians, cafeteria employees, guards, and supervisor/team leaders as defined by the Act.

The unit description language has not changed since 1952 with respect to the included and excluded employees. While the unit description refers only to "employees" and "plant clerical employees" in the inclusions, the most recent collective bargaining agreement which expired by its terms on October 6, 2002, also refers to the unit as "nonexempt maintenance positions" and provides more specificity by listing classifications of employees on the salary rate schedule contained in that agreement. Among the classifications listed are: janitor, laborer, helper, machinists, warehousemen/truckdriver, electrician, pipefitter, welder, sailmaker, logger, sheetmetal worker, crane operator, boiler operator, rigger, carpenter, painter, and mechanic.

The unit employees perform a variety of maintenance functions at the NRF, which has been described as a small city. Specifically, unit employees maintain the road, water, sewage, electrical distribution, security, and heating systems. They also maintain the emergency electrical power plants and emergency fire and ventilation systems. The unit employees perform building maintenance on the almost 700,000 square feet of building

space, including the 300,000 square foot ECF, and preventative maintenance and emergency repairs on the equipment located throughout the NRF. Certain unit employees are responsible for the boiler warehouse, general facility cleaning and janitorial duties, lawn care, and general refuse processing. Other unit employees are responsible for performing traditional craft maintenance and construction duties such as welding, painting, pipefitting, machining, electrical work, carpentry, and sheetmetal fabrication. There are also about 12 unit crane operators and 13 riggers who work primarily in the ECF on the huge construction type cranes used to move irradiated components into and out of the water pools. The duties of these unit employees were unaffected by the implementation of the NWT classification. Finally, the unit includes one locksmith who works throughout the NRF.

The Employer does not have job descriptions for the unit employees, as it does for the technicians. The record establishes that some of the unit employees have completed apprenticeship training for specific craft-type work they perform at the NRF, but the majority of the unit employees have received only on-the-job training relating to specific tasks they are assigned. The represented employees also receive some training involving emergency evacuations because of the nature of the work performed at the NRF. The monthly salaries of the unit employees have three tiers including a hire rate, mid-point rate (after six-months of employment), and high rate, which takes effect six months after the mid-point rate. The lowest unit monthly salary rate is for janitors, starting at \$2407.42, with a high rate of \$3290.34. The highest unit rate is for systems electricians with a hire rate of \$3252.90 and a high rate of \$4594.72.

3. NWT work functions

The NWTs, unlike the majority of the bargaining unit employees, work exclusively in

the Expanded Core Facility (ECF). The NWTs are responsible for receiving, processing, examining, and testing the spent nuclear fuel and other waste products. The NWTs also run test programs involving irradiated materials and new fuel types from the test reactors located at the advanced test reactors site.

The NWTs and their predecessor classification, ICETs, are categorized as “A” or “B” based on their level of education, training and work-related experience and have comprehensive job descriptions. The NWT “B” minimum monthly salary rate is \$2361.00. The mid-point rate is \$3707.88, and the high rate is \$4156.82. The NWT “A” minimum monthly salary rate is \$2521.24. The mid-point rate is \$4236.82, and the high rate is \$4808.66.

Immediately upon hire or transfer, NWTs and their predecessor, ICETs, begin six-months of classroom training in the fundamentals of fuel handling. This fuel handling training covers so-called “criticality principles,” accountability systems for the movement of components through the system, and casualty training in the event of accidents.

During this training period, the NWT technicians do not perform any actual NWT work, but spend time in ECF observing trained NWTs. The NWT trainees are required to pass a quiz for each of the twelve units of study, and pass tests with written and oral components following each four-unit block. At the end of the twelve units, the trainees must pass a comprehensive written and oral exam. After completing this classroom training and observation period and passing the tests, the NWTs begin on-the-job training for specific job tasks. They must satisfactorily perform each task three times before they are considered qualified to perform it without direct supervisor. It can take several weeks or longer to qualify for specific tasks, depending on the complexity of the task.

BARGAINING HISTORY INVOLVING TECHNICIAN CLASSIFICATIONS AT THE NAVAL REACTORS FACILITY

1. Technical unit Board Holdings

In **Westinghouse Electric Corporation (Naval Reactors Facility)**, 137 NLRB 332 (1962), the Board dismissed two petitions filed by the Petitioner herein, on the basis that the two petitioned-for units of technical employees and the proposed alternative unit were inappropriate. One of the units of technicians sought by the Petitioner in that case included the hot cell technicians and fuel-handling technicians, which are the predecessor classification names for the former ICETs, now classified as NWTs. Specifically, the Board held that the only appropriate technical unit must include all technicians performing work at the NRF because of the integration of the Employer's technical functions and interdependence of some technicians on the work of the other classifications of technicians. "All are salaried, are on the same payroll, are subject to the same personnel policies, are under the same progression program, have common facilities for eating, receive the same training course in criticality,² and have identical employee benefits. Petitioner seeks arbitrary and artificial groups of these

² While the Board does not provide details about this "criticality training," there is no evidence that the current training requirements for the NWTs have changed in scope and duration since this first Board decision.

employees. The units petitioned for do not constitute functionally distinct or homogeneous groups of employees, nor administrative or departmental units, such as the Board might recognize.” Id at 337.

Similarly, in **Westinghouse Electric Corporation**, 300 NLRB 834 (1990), based upon a petition filed by Oil Chemical and Atomic Workers International Union, Local 2-652, the Board reversed the Acting Regional Director’s finding that a unit consisting only of the radiological control technicians was appropriate. Citing **Westinghouse**, 137 NLRB 332, 336, the Board stated: “The record concerning radiological control technicians 30 years later is strikingly similar. Thus, the record provides no support for departing from the Board’s 1962 finding that the functions of the Employer’s technical employees, including radiological control technicians, ‘are thoroughly integrated and interdependent.’” The Board also noted in footnote 7 of that decision that there has been no change in the basic requirements for a technician job. While it did not specifically mention the training requirements in that footnote, it did cite those requirements from the 1963 decision.

On February 2, 1991, a Certification of Results of Election issued for the technician unit sought in the 1990 proceeding. That unit included the ICET classification employees recently changed to NWTs.³

³ The unit was described as: Inspectors, instrument specialist and instrument technician, irradiated components examination technician and irradiated components controller, radiological controls technicians, chemistry technician, operations technician, technical designer, refueling equipment technician, reactor test technician, and technical specialist employed by the Employer at its Naval Reactor Facility located 60 miles west of Idaho Falls, Idaho; but Excluded: All office clerical employees, guards and supervisors as defined in the Act, and all other employees.

2. Recent Representation Petitions

In Case 27-RC-7671, the Petitioner herein also filed a petition seeking to represent a technical unit of the Employer's predecessor's employees including ICETs.⁴ An election was held on June 6, 1996 and a Certification of Results issued on June 17, 1996.

In 1999, Bechtel Bettis was awarded the contract to operate the NRF. Subsequently, on March 22, 2002, the International Association of Machinists & Aerospace Workers (IAM), Local Lodge 1933, filed a petition in Case 27-RC-8167 seeking to represent a unit of its technical employees including the ICETs. Petitioner in the instant proceeding did not intervene in that case. A Certification of Results of Election issued in that Case on May 10, 2002.⁵

On July 1, 2003, IAM Local Lodge 1933 filed another petition in Case 27-RC-8263 seeking an election in the identical unit as previously stipulated to in Case 27-RC-8167. That labor organization and the Employer again stipulated to an election in the unit as previously agreed to in Case 27-RC-8167, and, again, the Petitioner in the instant proceeding did not intervene in that proceeding. The petition in Case 27-RC-8263 was withdrawn on August 11, 2003, two days prior to the scheduled election.

⁴ That unit was described as: Inspectors, Instrument Specialists, Instrument Technicians, Irradiated Components Examination Technician, Irradiated Components Controllers, Radiological Control Technicians, Chemistry Technicians, Operations Technicians, Technical Designers, Refueling Equipment Technicians, Reactor Test Technicians, and Technical Specialists; BUT excluding: All Office Clerical Employees, Guards and Supervisors as defined in the Act, and all other employees.

⁵ The unit in that proceeding was described as: All Chemistry Technicians, Irradiated Components Examination Technicians, Inspectors, Operations Technicians, Radiological Controls Technicians, Technical Designers, Instrumentation and Control Technicians employed by the Employer at its Naval Reactor Facility located 60 miles west of Idaho Falls, Idaho; BUT EXCLUDING: All office clerical employees, guards and supervisors as defined in the Act, and all other employees.

IMPLEMENTATION OF THE NWT CLASSIFICATION

1. Genesis of NWT Classification

In August 2001, the United States Navy determined that in order to have consistency in its nuclear operations it wanted fuel-handling operations performed at the NRF to be consistent with the methods and the procedures done at the naval shipyards. At that time, the Navy required the Employer to adopt the Navy's "Manual for Controlled Refueling," and the procedures and processes dictated by that manual. The manual included detailed work procedures and job titles used in the naval shipyards. Specifically, the manual used the classification "nuclear worker" for employees performing work similar to that performed by the ICET classification the Employer was using at that time. The Manual for Controlled Refueling also utilized a work team concept with specifically formulated teams assigned to do specific tasks. In conjunction with the Navy's requirements, the Employer also inspected various shipyards to see how they performed spent fuel processes. When it toured the naval shipyards, the Employer compared the NRF processes with those of the shipyards, including which classifications did particular work. After those inspections, the Employer determined that if it moved some cask receiving and unloading functions from the unit employees to the ICETs, it would result in increased work efficiency and save the Employer and the government money because of a reduction in manpower requirements.

2. Specific Changes adopted by the Employer in FY2004

Among the changes the Employer adopted were changing the title of the ICETs to NWTs to comport with the Navy's requirements and having the NWTs assume a minor part of the fuel and cask receiving and shipping duties previously assigned to about seven unit

laborers and one mechanic.⁶ These changes were implemented at the start of the new fiscal year in October 2003. The changes in the overall ECF processes resulting from adopting the Manual for Controlled Refueling had the effect of slowing down the cask processing functions. As a result, the Employer increased the size of the NWT workforce. Between October 2003 and December 2003, the Employer hired six NWTs from the outside and promoted seven bargaining unit employees into NWT positions.

Because of the classified nature of the work performed by the employees working in the ECF, the witnesses could only testify in generalities about the actual work performed by the NWTs and the work removed from the bargaining unit. It is clear, however, that the work removed from the bargaining unit effected six employees classified as “laborers” and one classified as “mechanic.” None of the affected employees was terminated or laid off. It appears that most of the affected laborers and two unaffected laborers elected to bid on available NWT openings. Seven of these nine employees were hired for NWT positions. One of the nine applicants declined the offered NWT position and the other bid on a unit rigger position which opened when one of the applicants moved from his rigger position into an NWT position.

The mechanic whose work was effected by the NWT classification change testified that he no longer is involved in jacking, blocking and leveling the rail cars brought into the ECF for unloading. He also no longer removes bolts holding the casks in place in the rail cars or installs the jacking mechanisms used to prepare the casks for removal from the rail car. This mechanic also testified that he now performs additional custodial work and

⁶ The Employer also adopted other changes in job classification titles and work functions unrelated to this proceeding.

preventative building maintenance throughout the NRF, and continues to perform maintenance on the ECF hot cell equipment, cranes, rail systems, water pumping systems and water pools.

The laborers whose work was effected by the NWT classification changes testified that between 10 to 20 percent of their work as laborers is now being done by NWTs. This includes certain functions related to preparation for receiving and shipping of the casks such as acting as spotters as the rail cars and trucks are moved into and out of the ECF; setting up contamination shields around the unloading area; assisting the radiation control technicians in taking radiation readings during the receiving process, and wiping down the casks as part of the required decontamination process. These laborers also had assisted the mechanic as needed in the jacking and bolting processes.

An example of efficiency gains cited by the Employer is that before combining some ICET and unit work, there were times in which the ICETs had to wait for a unit mechanic to arrive to unbolt the casks from the truck or railcar bed. Now, the NWTs perform the unbolting work and are able to move directly on to the next task in the complicated cask unloading process. This has allowed for a reduction in the size of the teams for the various kinds of cask unloading and shipping by one to two employees.

At the time the Employer implemented the changes, it held meetings with all existing ICETs to inform them of the change in the name of their job classification. The majority of the ICETs were told that there would be no change in their actual work functions. A few ICETs were informed that they would now be performing some cask unloading support functions that were previously part of the laborer and mechanic unit work.

3. Recent Bargaining

The most recent collective-bargaining agreement expired on October 6, 2002. The parties engaged in extensive bargaining commencing in September 2002 and ending in September 2003 at which time the Employer unilaterally implemented its final offer. Neither party contends that the bargaining or the Employer's implementation of its final offer affects an otherwise appropriate clarification of the unit as sought in this case. On September 5, 2003, the Employer posted a document entitled "NRF Career Opportunity." It sought applications for the ICET B classification and stated: "To be retitled Nuclear Worker Technician B in FY2004." As noted, nine unit employees applied for this position and seven were awarded the position. On approximately December 1, those seven employees began the six-month classroom training required for the NWT (and former ICET) positions.⁷ Following this classroom training and passing the qualifying tests, these employees will then begin the process of task specific on-the-job training for various discrete NWT job functions. These seven employees also began the process of having their security clearances upgraded from L to Q level. These former unit employees were promoted based on their prior college or vocational/technical training or their experience working as cask receiving laborers or mechanics.

LEGAL ANALYSIS AND CONCLUSIONS

1. Legal Framework in Accretion Cases

In Union Electric Company, 217 NLRB 666, 667 (1975), the Board explained when accretion is appropriate:

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial

⁷ Unit employees do not receive this same classroom training for their job functions.

changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category--excluded or included—that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent.

It is well settled that the Board follows a restrictive policy in finding accretions to existing bargaining units, because it is reluctant to deprive employees of their basic right to select their own bargaining representative. Indeed, the Board, will not, "under the guise of accretion, compel a group of employees who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret election." **Melbet Jewelry Co.**, 180 NLRB 107, 110 (1969). Consequently, the Board will find a valid accretion only when the additional employees share an overwhelming community of interest with the preexisting unit to which accretion is sought. **ATS Acquisition Corp.**, 321 NLRB 712 (1996) and **Gitano Group, Inc.**, 308 NLRB 1172, 1174 (1992). The Board recently restated this proposition as follows: "An accretion is simply the addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate group identity. [Citations omitted.]" **American Medical Response**, 335 NLRB 1176 (2001). See also, **Progressive Service Die Co.**, 323 NLRB 183, 186 (1997), and **Safety Carrier, Inc.**, 306 NLRB 960, 969 (1992). The

case at hand does not involve the proposed addition of a “relatively small group of employees to an existing unit.”⁸

In light of the uncontested record evidence establishing that the proposed unit clarification would accrete a larger group of NWTs into the smaller bargaining unit represented by the Petitioner, I find that the proposed unit clarification is not warranted.⁹

Even assuming that the NWT classification was not larger than the existing bargaining unit, I would still find the proposed unit clarification to be unwarranted. In this regard, as noted above, the Board in **Union Electric**, supra, stated that accretion was not appropriate unless the existing classification had undergone a recent, substantial change, thereby creating a doubt as to whether the employees in the classification continued to fall within the included or excluded category they occupied in the past.

⁸ While **American Medical Response**, and the cases cited therein and above, state that accretions involve “a relatively small group of employees,” the Board in **Central Soya, Co.**, 281 NLRB 1308 (1979), accreted a unit of 13 feed mill employees at a newly acquired location into a represented unit of 15 feed mill employees. In so holding, the Board noted that it had never found that when the two groups of employees in question are of approximately the same size an accretion cannot be found, but that the key fact was majority status of the represented unit. Based on that rationale, the Board in **Geo. V. Hamilton, Inc.**, 289 NLRB 1335, 1338-1339 (1988), declined to find an accretion when the employer merged two separate warehouse facilities resulting in merging an unrepresented unit of two employees into a represented unit of two employees. The most recent case in which the Board has held that it is inappropriate to accrete a larger group of employees into a smaller bargaining unit as the Petitioner is seeking herein is **Carr-Gottstein Foods Company, Inc.**, 307 NLRB 1318. In **Carr-Gottstein** the Board stated:

When the unrepresented group sought to be accreted numerically overshadows the existing unit, the Board will not accrete the larger number of unrepresented employees without giving them a chance to express their representational desires. **Geo. V. Hamilton, Inc.**, 289 NLRB 1335, 1338-1339 (1988); **Central Soya Co.**, 281 NLRB 1308 (1979); **Renaissance Center Partnership**, 239 NLRB 1247 (1979).

⁹ The Petitioner did not address the issue of the relative size of the group of employees it sought to accrete as compared to the existing unit either at the hearing or in its posthearing brief. Instead, the Petitioner contends that the Board’s holding in **John P. Scripps Newspaper Corp, d/b/a the Sun**, 329 NLRB No. 74 (1999), should be applied. I find the **Scripps Newspaper** case inapposite because it involves bargaining units defined by work performed. Herein, the unit is described by job classifications, not by the work performed as contemplated by the holding in **Scripps Newspaper**. Moreover, the existing unit has always excluded all “technicians.” While the Petitioner has asserted in this proceeding that the NWTs are no longer “technicians” as contemplated by the parties when they stipulated to the exclusion of all technicians in the 1952 proceeding which resulted in it being certified to represent the maintenance/craft unit, the record does not warrant such a conclusion, especially in light of the bargaining history and the fact that the NWTs

I conclude that the Petitioner has not met its burden of establishing that the NWT classification has undergone a “substantial change.” Rather, the evidence establishes that the vast majority of the former ICETs simply underwent a change to the name of their job classification. The only change of job duties was the addition of a few minor tasks relating to the cask receiving and shipping functions. Thus, the record does not establish that there were work changes sufficient to “cast doubt on the continued exclusion” of this newly named group of technicians from the existing maintenance/craft unit. In this regard, in

Robert Wood Johnson University Hospital, 328 NLRB 912 (1999), the Board cited **Union Electric** for this proposition and then stated:

Rather, a petition seeking to include a classification historically excluded would raises a question concerning representation which can only be resolved through an election, or based on majority status. [Citations omitted.] The limitations on accretion . . . require neither that the union have acquiesced in the historical exclusion of a group of employees from an existing unit, nor that the excluded group have some common job-related characteristics distinct from unit employees. It is the fact of historical exclusion that is determinative. [Emphasis added.] Id at 914.

Similarly, in **Bethlehem Steel Corporation**, 329 NLRB 243 (1999), the Board stated:

[W]e find that the problem with the petition is not simply untimeliness. Rather, because the petition deals with positions that have historically been excluded from the bargaining unit, and have not been shown to have undergone recent substantial changes, it is a petition that the Board would refuse to entertain it even if the existing collective-bargaining agreement were about to expire. . . . [Union Electric quotation and citation omitted.] Clarification is not appropriate, however, for upsetting . . . an established practice of such parties concerning the unit placement of various individuals.”

are required to have previous technical training or related work experience and must still spend six months in rigorous classroom training before being allowed to perform any regular NWT tasks.

Because I find that clarification of the Unit is not appropriate for the reasons set forth above, I find it unnecessary to determine whether an overwhelming community of interest exists between the NWTs and the bargaining unit employees as would also be required before clarification of the Unit would be appropriate.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of § 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by March 15, 2004.

DATED at Denver, Colorado this 1st day of March, 2004.

B. Allan Benson, Regional Director
National Labor Relations Board, Region 27
600 17th Street, Suite 700 North
Denver, Co 80202-5433